

**BEFORE THE INDIANA  
CASE REVIEW PANEL**

In The Matter of K. G.,	)	
Petitioner	)	
and	)	<b>CAUSE NO. 040213-32</b>
The Indiana High School Athletic Assoc. (IHSAA),	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	<b>Closed Hearing</b>
I.C. 20-5-63 <i>et seq.</i>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History**

Petitioner is a 16-year-old sophomore (d/o/b October 23, 1987) at Greenfield-Central High (hereafter, referred to as “Greenfield”). He attended Cathedral High School, a private school in Indianapolis (hereafter, “Cathedral”) for his freshman year (2002-2003 school year). He played baseball while at Cathedral. He became injured while preparing for and participating in the baseball program at Cathedral. Petitioner’s father expressed dissatisfaction with the Cathedral program and decided to enroll Petitioner in his local public school. The Petitioner enrolled in Greenfield and completed the IHSAA Athletic Transfer Report on August 12, 2003, indicating the reason for the transfer was to return to the local public school. Cathedral completed its portion of the Transfer Report on August 20, 2003, indicating its belief the transfer was primarily for athletic reasons, requesting further investigation, but indicating that no undue influence was present on behalf of Greenfield. Cathedral recommended Petitioner be ineligible for athletic competition pursuant to Respondent’s by-law **C-19-4**.<sup>1</sup>

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<sup>1</sup>The IHSAA has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders (“B” for Boys, “G” for Girls), but many of the by-laws are “common” to all potential athletes and, hence, begin with “C.” **Rule C-19-4** provides as follows:

**Transfers for Primarily Athletic Reasons**

To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school ‘jumping’ for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school, provided, however, if a student transfers and it is not discovered at that time that the transfer was primarily for athletic reasons, then under those circumstances, the student may be declared ineligible for a period not to exceed 365 days following the date of enrollment or, may be declared ineligible for a period not to exceed 365 days commencing on the

Greenfield completed the Transfer Report on October 22, 2003, but made no recommendation as to Petitioner's potential eligibility.

Respondent, by its Commissioner, reviewed the matter and, on December 12, 2003, declared Petitioner ineligible for interscholastic competition until August, 2004, pursuant to **C-19-4**. On December 18, 2003, Petitioner, through Greenfield, appealed this decision to Respondent's Review Committee. The Review Committee conducted its review on January 15, 2004, and issued its written decision on January 23, 2004, upholding the determination of ineligibility for Petitioner.

### **APPEAL TO THE CASE REVIEW PANEL**

Petitioner appealed the adverse decision of the Review Committee to the Indiana Case Review Panel (CRP) on February 13, 2004.<sup>2</sup> The CRP notified the parties by memorandum of February 17, 2004, of their respective hearing rights. The Respondent was asked to forward its record. The parent was provided with a "Consent to Disclose Student Information." The parent, on February 20, 2004, elected to have the hearing proceedings **closed** to the public. A hearing was set for March 5, 2004, in the offices of the Indiana Department of Education.

The parties appeared on March 5, 2004. Both parties were represented by counsel. Petitioner submitted one (1) additional exhibit, which was marked P-1. Respondent submitted two (2) additional exhibits, which were marked R-1 and R-2. Neither party posed objections. The exhibits were entered

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date that the Commissioner or his designee declares the student ineligible which was the result of a transfer for primarily athletic reasons. (All references are to the 2003-2004 by-laws.)

Respondent defines "transfer for primarily athletic reasons" under **Rule 19** as follows:

A transfer for primarily athletic reasons includes, but is not limited to:

- a. A transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. A transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. A transfer seeking a teach consistent with the student's athletic abilities;
- d. A transfer to obtain a means to nullify punitive action taken by the previous school.

<sup>2</sup>The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decisions are to be student-specific, applying only to the case before the CRP. The CRP's decision does not affect any By-Law of the IHSAA.

into the record.<sup>3</sup>

The following Findings of Fact and Conclusions of Law are based upon the evidence and testimony presented at the hearing in this matter, as well as the record as a whole. All Findings of Fact are based upon evidence presented that is substantial and reliable. I.C. 4-21.5-3-27(d).

### FINDINGS OF FACT

1. Petitioner is a 16-year-old sophomore (d/o/b October 23, 1987) enrolled in Greenfield-Central High School. He attended Cathedral High School for his freshman year of high school (2002-2003), where he participated on Cathedral's junior varsity baseball team.
2. Petitioner's older sister attended Cathedral High School as well, graduating in 2002. She participated on Cathedral's softball team. Petitioner's parents stated their daughter experienced social isolation at Cathedral, possibly due to geographic location of the family or the family's faith tradition. Petitioner's parents also do not believe Cathedral's athletic department was supportive of Petitioner's sister when she signed a letter of intent to play softball in college. Petitioner's parents also expressed dissatisfaction that a player of allegedly less ability than Petitioner's sister played ahead of her on the Cathedral softball team. Notwithstanding these and other representations of dissatisfaction and perceived slights, the parents enrolled Petitioner at Cathedral following his sister's graduation.
3. Petitioner's family is heavily involved in baseball. Petitioner's father had been an assistant baseball coach at Greenfield from 1990-1993. The head baseball coach at that time is now the assistant athletic director at Cathedral. Petitioner's father stated that precipitating reasons for seeking private education for his children were conditions then existing at Greenfield. The decision to seek private education was also influenced by differences with the Greenfield school board, which dismissed Petitioner's father as an assistant coach. He represents that these conditions are no longer present at Greenfield. He recently applied for the vacant head baseball coaching position at Greenfield but was not selected.
4. Petitioner has been an active participant in baseball for many years. When he enrolled in Cathedral for the 2002-2003 school year, he began participating in fall work-outs. However, he suffered an injury to his throwing shoulder. Physicians recommended a 12-16 week rehabilitation period. In April of 2003, Petitioner pitched for Cathedral in a junior varsity game. After the game, he had severe discomfort in his throwing elbow. In a junior varsity game six days later, Petitioner, while playing shortstop, injured his arm. This ended his season. Surgery on his elbow was performed in May of 2003.

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<sup>3</sup>John L. Earnest served as the Chair. He was joined by CRP members Pamela A. Hilligoss; James Perkins, Jr.; Michael L. Ross; Brenda K. Sebastian; and Brad Tucker.

5. There were at least two (2) instances during workouts during the fall of 2002 where Petitioner was dissatisfied with playing opportunities and workouts. These fall workouts are conducted by the seniors. Freshmen, including Petitioner, did not get the same opportunities for active participation as upperclassmen. Petitioner's father had a disagreement with the Cathedral baseball coach over the father's desire to have Petitioner receive additional baseball skill training from the Cathedral assistant athletic director, training the Petitioner had received during his eighth grade year.
6. In discussions with the assistant athletic director (on or about August 18, 2003), director of admissions (August 11, 2003), and baseball coach at Cathedral (August 12, 2003), Petitioner's father indicated his dissatisfaction with Cathedral's baseball program, a purported lack of team chemistry, and perceived lack of concern for Petitioner's well-being. Petitioner's father was also concerned that junior varsity and freshmen baseball players did not have a season-ending banquet. He acknowledged Cathedral's academic reputation but stated on at least two (2) occasions that the baseball program does not meet the standards of excellence.
7. In discussions with Respondent's Commissioner, Petitioner's father focused almost exclusively on athletic concerns. The Commissioner warned Petitioner's father that he was dwelling almost exclusively on athletics, but this did not deter Petitioner's father.
8. Petitioner's stated reason for transferring to Greenfield from Cathedral was to return to public school. Petitioner has not attended public school since kindergarten. He attended a parochial school until his eighth grade year. During his eighth grade year, he was home-schooled.
9. Although testimony is somewhat conflicting as to when Petitioner actually transferred to Greenfield, it appears the Petitioner enrolled on or about August 12, 2003, and officially withdrew from Cathedral on or about August 13, 2003. On August 12, 2003, Petitioner's father, while completing the Transfer Report, was cautioned by the Greenfield athletic director that there could be eligibility problems because there was not a corresponding change of residence. The Cathedral assistant athletic director also cautioned Petitioner's father in this regard in a telephone conversation that occurred on or about August 18, 2003.
10. Following the injury sustained during the fall of 2003, physicians had recommended a 12-16 week rehabilitation period. However, it was Petitioner's father who sought to have the Petitioner cleared medically at an earlier time so he could engage in baseball try-outs on March 1, 2003.
11. Notwithstanding the activities of Petitioner's father, the Petitioner sought out the Cathedral baseball coach in October of 2002 to discuss his concerns about fall workouts and conditioning and to apologize for a lack of enthusiasm demonstrated the day previous. The Cathedral

baseball coach characterized the Petitioner as “hesitant” and “tentative” in approaching the baseball coach. The baseball coach asked him if he were transferring or quitting the team. The baseball coach indicated that this was intended to be humorous, but the Petitioner did not interpret this as humorous or an attempt to “lighten the mood.” The baseball coach acknowledged the Petitioner did not seem to perceive any humor in the remark. The Petitioner responded with uncertainty, concerned the baseball coach would not be receptive to Petitioner’s continued presence on the team.

12. Petitioner indicated that he never quite felt a part of Cathedral. He provided no specific situations. He did indicate that he enjoyed his classes and teachers, and that his teachers and guidance counselor have been helpful during his stay at Cathedral and his transition to Greenfield. His primary complaints centered on Cathedral students from a different county and the length of travel time between his home and Cathedral activities. Following his injury and subsequent surgery, he received no contact from his baseball coaches.
13. In a lengthy and sometimes acrimonious conversation between Petitioner’s father and the Cathedral baseball coach on August 12, 2003, the conversation dwelt primarily on athletics and perceived inadequacies in the baseball program. Petitioner’s father also expressed his displeasure at the apparent lack of concern or follow-up shown Petitioner by the athletic department and baseball coaches following surgery in May of 2003. Although the Cathedral baseball coach does not recall telling Petitioner’s father to transfer, the father maintains this occurred. The Cathedral baseball coach did indicate that he considered Petitioner’s father to be “too high maintenance” for him and that he “felt him looking over my shoulder too much.” The baseball coach does not deny that he did not contact Petitioner after the injury and subsequent surgery.

### CONCLUSIONS OF LAW

1. Although the IHSAA is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are considered “state action,” and for this purpose, makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-5-63 *et seq.* The Case Review Panel has jurisdiction when a parent or guardian invokes the review function of the Case Review Panel to challenge an application or interpretation by Respondent of one of its by-laws. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the Student. The Petitioner timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent’s adverse eligibility determination.

2. Petitioner's father insisted that athletics was not at the heart of the decision to transfer. However, his testimony was entirely focused on athletic-related matters with only passing references to academics and socialization with no specifics provided as to these latter two proffered concerns. His conversations with the Cathedral director of admissions and Respondent's Commissioner are both indicative that the father's intent to transfer was primarily for athletic reasons. Petitioner's mother's testimony did not provide any substantive testimony other than athletics. The Petitioner's sisters purported experiences at Cathedral have little relevance because these experiences, if they occurred, occurred to her and not Petitioner, and if such matters occurred and she were so dissatisfied, it is not logically the parents would enroll their second child at the school.
3. Although Petitioner's parents were primarily concerned with athletics, the Petitioner himself presents a different situation. The Cathedral baseball coach's remarks in October of 2002 ("Are you transferring or quitting the team?") were not interpreted by the Petitioner as humorous or an attempt to "break the ice." The baseball coach noted that Petitioner was nervous and tentative in just approaching the baseball coach. He also noted the Petitioner did not interpret the remark as humorous or in any fashion setting him at ease. The baseball coach was remarkably non-specific in several details, especially with regard to any statement he may have made to Petitioner to the effect that he should transfer. He could not recall whether he said this or not. In his testimony before the Case Review Panel, the baseball coach did not appear to be especially inclined kindly toward Petitioner's family, referring to Petitioner's father as "too high maintenance" for his liking. Although there is some disagreement as to whether the baseball coach told the father to transfer during the August 12, 2003, telephone conversation, it is more likely than not that such a statement was made. Although the actions of Petitioner's parents and the baseball coach in this matter are deserving of criticism, the Petitioner has more than sufficient reason to believe that he was not welcomed on the baseball team and that he was being encouraged to transfer. These reasons appear to be unrelated to Petitioner and appear to be the result of friction between the baseball coach and Petitioner's father.
4. Petitioner provided information regarding three (3) other former Cathedral students. This information was not relevant and likely will be restricted or disallowed in any future hearings before the CRP. There is no evidence that either Cathedral or Greenfield violated any by-law of Respondent in the conduct of this matter. Both schools complied with Respondent's by-laws and procedures. To the extent Petitioner is asserting a retaliation claim, there is no evidence to support this.
5. Although there is ample evidence of the parents' athletic motivations for this transfer, this will be balanced against the statements and actions of the Cathedral baseball coach. When viewed in its totality, the Petitioner should not be excessively sanctioned for the actions of the adults. For this reason, it is concluded that Petitioner should have "limited eligibility" through August 13,

2004, as provided for by **C-19-6.2**.<sup>4</sup>

Based on the foregoing Findings of Fact and Conclusions of Law, and following discussion of the merits of the case on the record, the Case Review Panel decided as follows:

#### ORDER

1. The decision of the Respondent is modified. The Student shall have “limited eligibility” through August 13, 2004. This was determined by a vote of 6-0 on the third submission of the question.

DATE: March 11, 2004

/s/ John L. Earnest, Chair  
Indiana Case Review Panel

#### APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.

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<sup>4</sup>**Rule C-19-6.2** provides that “[a] student who transfers without a corresponding change of residence to a new district or territory by the student’s parent(s)/guardian(s) may be declared to have limited eligibility.” “Limited eligibility” is defined under **Rule 19** as follows: “A student who is declared to have limited eligibility shall be eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not participate in interschool athletics as a member of a varsity athletic team.”